IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

CRP.No. 81 of 2006()

IA.78/2006 IN AS.75/2004 of V ADDL. DISTRICT COURT, ERNAKULAM
OS.90/2002 of ADDL.SUB COURT, KOCHI

.....

REVN. PETITIONER: PLAINTIFF:

REETHA W/O. K.X. CHACKO,
KALLUKARAN HOUSE, AGED 64 YEARS,
NARAKKAL P.O., NARAKKAL VILLAGE,
KOCHI TALUK, ERNAKULAM DISTRICT.

BY ADV. SMT.V.A.KASTHURI

RESPONDENTS: DEFENDANT:

KUNJU BAVA S/O. MOIDEEN,
AGED 50 YEARS, NJAVELIKAL HOUSE,
NAYARAMBALAM MURI, NAYARAMBALAM VILLAGE,
KOCHI TALUK.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.416/2006 IN CRP.NO.81/2006

Dismissed

11/7/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN J.

C.R.P.No.81 OF 2006

Dated this the 11th day of July, 2007

O R D E R

Petitioner is the plaintiff in O.S.No.90/2002. The suit was one for realisation of an amount of Rs.1,67,000/-, which was decreed as prayed for against which the defendant preferred an appeal as an indigent person. Eventually the appeal was allowed in part and the decree was sustained to extent an amount of Rs.40,000/- with interest thereon. In other words, the appeal was allowed setting aside the decree for Rs.1,27,000/-. The court below while rendering the judgment under date 22nd September, 2005 ordered that since the appellant (defendant) has only partly succeeded in this appeal, both the parties shall suffer their respective costs. Thereafter, in the penultimate paragraph it was directed as follows:

> "The total court fee payable on the appeal memorandum is Rs.10,825/-. Since the appellant has succeeded in part, the court fee payable on that part of the valuation shall be recovered from the plaintiff/respondent. The court fee on the disallowed portion shall be realised from the defendant/appellant. The amount of court fee payable by the plaintiff as aforesaid shall be a charge on the decree amount....."

2. Thereafter, the plaintiff filed an application under Section 152 of the C.P.C. seeking review of the judgment and decree passed in the appeal

by deleting the apportionment of the court fee payable by the defendant from the respondent/plaintiff and to delete the charge made on the decree amount. It was contended by the petitioner that there is no provision in the C.P.C. for apportionment of the court fee between the parties. It was argued that the direction of the First Appellate Court in the last paragraph of the judgment that the plaintiff to pay the court fee on the disallowed portion is a mistake, which can be corrected under Section 152 of the C.P.C. The court below, after referring to the decision of this Court in **Dev v. Chief Secretary, Government of Kerala (2003(3) KLT 201)** held that what has been directed is not a mistake and in view of the clear wording in Order 33 Rule 10 C.P.C. and in the light of the decision as aforesaid, the application was held to be not maintainable. This revision is directed against the said order dated 18th January, 2006 in I.A.No.78/2006 in A.S.No.75/2001.

3. I have heard the argument of the learned counsel Smt. V.A.Kasthuri, appearing on behalf of the revision petitioner and also the learned counsel for the respondent.

4. The only question that arises for consideration is as to whether the application filed under Section 152 of the C.P.C. as though a mistake

has crept in while passing the judgment, which was rejected by the court below, is liable to be interfered with in this revision. In this connection, it has to be noticed that though the appeal was partly allowed, the court below directed the parties to suffer their respective costs. Admittedly, the respondent herein succeeded in the appeal partly. Being an indigent person, court fee was not paid. That portion of the court fee payable by the appellant is in the normal course recoverable from the respondent in the said appeal. Being an indigent person, invoking the provision of Order 33 Rule 10 of the C.P.C., the court below directed that court fee realisable by the appellant be recovered by the State and there will be a charge on the decree. It cannot be said that there is an arithmetical or clerical mistake crept in in the judgment. Whether the said direction contained in the judgment is correct or not, is to be challenged in an appeal therefrom. Admittedly, the petitioner has not preferred any appeal against the judgment in A.S.No.75/2004 and when an appeal lies thereto before this Court, the revision under Section 115 of the C.P.C. is not maintainable and the only order if at all which can be maintained by way of revision is the order in I.A.No.78/2006, which alone is challenged. I do not find any reason to hold that that the said order passed by the court below

holding that there is no mistake to be rectified under Section 152 of the C.P.C., is in anyway a jurisdictional error nor an order exercising jurisdiction with any material irregularity.

In the circumstances, the revision fails. Accordingly it is dismissed.

P.R.RAMAN,
Judge.

kcv.